

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the State of California,
Department of Transportation, for an Order
Authorizing the Department to Construct a
Grade Separation on State Route 90 (Imperial
Highway) over Tracks owned by the BNSF
Railway Company, C.P.U.C. Crossing No. 2B-
38.40, in the County of Orange.

Application 05-04-026
(Filed April 28, 2005;
Amended June 22, 2005)

O P I N I O N**Summary**

This decision grants the request of the California Department of Transportation (Caltrans) for authority to replace the existing at-grade highway-rail crossing with a grade-separated overpass at State Route 90 (SR-90), also known as Imperial Highway, over BNSF Railway Company's (BNSF) San Bernardino Subdivision tracks, and to also construct a temporary at-grade highway-rail crossing approximately 100 feet to the east of the existing crossing, in Orange County.

Discussion

The proposed project, undertaken in cooperation with the Orange County Transportation Authority and cities of Anaheim and Yorba Linda, is to grade-separate the existing at-grade crossing to improve operation and safety of the crossing. The project will be funded by Measure M, which was approved by

Orange County voters in 1990 as a means for providing funding for long-term transportation improvements throughout Orange County.

A temporary detour road will be constructed to divert vehicular traffic away from the construction area, and the temporary road will cross the two existing mainline railroad tracks. The temporary crossing will be eliminated at the completion of this project. The temporary at-grade crossing will have six travel lanes – two northbound through lanes, one northbound right-turn only lane, one northbound left-turn only lane, and two southbound through lanes. A raised island median will be installed to divide each direction of travel, on both sides of the tracks. The current annual average daily traffic count for vehicular traffic on SR-90 is 46,000, and the posted speed limit is 40 miles per hour. The crossing will be located approximately 44 feet south of the intersection of Orangethorpe Avenue and SR-90. In addition to BNSF freight trains, Southern California Regional Rail Authority operates Metrolink commuter trains and National Railroad Passenger Corporation operates Amtrak passenger trains on this line. The daily average freight train count is 65 with a timetable speed of 50 miles per hour, and the daily average passenger train count is 18 with a timetable speed of 60 miles per hour.

Caltrans filed an Amended Application to provide plans for automatic railroad crossing warning devices at the temporary crossing. These plans were not included in the original Application.

The proposed automatic railroad crossing warning devices for the temporary crossing are three Commission Standard No. 9s (flashing light signals with an automatic gate, as described in General Order 75-C) and one Commission Standard 9-A (Standard No. 9 with additional overhead flashing light signals on the cantilevered mast arm). Two of the Commission Standard

No. 9s shall be mounted on the raised island medians on each side of the tracks, and the third one shall be curb-mounted on the northwest quadrant of the crossing. The Commission Standard No. 9A shall be curb-mounted on the southeast quadrant of the crossing.

State of California, acting by and through Caltrans, is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code 21000 et seq. On May 8, 2003, Caltrans issued a CEQA Negative Declaration. It states an Initial Study was prepared for this project by Caltrans, and based on that study it determined that the project will not have a significant effect on the environment. On May 20, 2003, pursuant to National Environmental Policy Act, the Federal Highway Administration (FHWA) issued a Finding of No Significant Impact (FONSI) for this project. Copies of the Negative Declaration and FONSI are included in Appendixes B and C.

The Commission is a responsible agency for this project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, to comply with CEQA, a responsible agency must consider the lead agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project (CEQA Guideline Section 15050(b)). The specific activities, which must be conducted by a responsible agency, are contained in CEQA Guideline Section 15096.

The Commission's Consumer Protection and Safety Division, Rail Crossings Engineering Section (RCES) reviewed Caltrans' Negative Declaration and FHWA's FONSI. Safety, traffic (transportation), and noise are within the scope of the Commission's permitting process. The environmental documents

listed above do not identify any long-term significant impacts related to safety, noise, and traffic issues. We find that Caltrans and FHWA reasonably concluded that the project will not have a significant impact on the environment, and we adopt that finding for purposes of our project approval.

RCES has inspected the site of the proposed project. After reviewing the need for and safety of the proposed grade-separated overpass and temporary at-grade crossings, RCES recommends that the authority sought by Caltrans be granted.

The application is in compliance with the Commission's filing requirements, including Rule 38 of Rules of Practice and Procedure, which relates to the construction of public highway-rail crossings and separations.

Categorization and Need for Hearings

In Resolution ALJ 176-3152 dated May 5, 2005, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3152.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comments is being waived.

Assignment of Proceeding

Richard Clark is the assigned Examiner in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission's Daily Calendar on May 3, 2005. The Amended Application was filed on June 22, 2005, and a notice of its filing was published on the Commission's Daily Calendar on June 27, 2005. No protests have been filed.

2. Caltrans requests authority to remove the existing at-grade crossing of SR-90 and BNSF's San Bernardino Subdivision tracks, and to construct a grade-separated crossing over the tracks at its current location. Caltrans also requests authority to construct a temporary at-grade crossing, approximately 100 feet to the east of the existing crossing, to divert vehicular traffic from the construction area during construction. The temporary at-grade crossings will be eliminated at the completion of this project.

3. The proposed automatic railroad crossing warning devices for the crossing are three Commission Standard No. 9s and one Commission Standard No. 9-A.

4. Public convenience, safety and necessity require the construction of the proposed overhead grade-separated and temporary at-grade crossings.

5. Caltrans is the lead agency for this project under CEQA, as amended.

6. The Commission is a responsible agency for this project, and has reviewed and considered Caltrans' environmental documentation specified in this decision.

7. On May 8, 2003, Caltrans issued a CEQA Negative Declaration, which finds the project will not have a significant effect on the environment. On May 20, 2003 FHWA issued a FONSI for this project.

8. Safety, transportation, and noise are within the scope of the Commission's permitting process.

9. Caltrans' environmental documentation does not identify any significant environmental impacts from the construction or operation of the proposed crossing related to safety, noise, or transportation.

Conclusions of Law

1. The application is uncontested and a public hearing is not necessary.
2. We find Caltrans and FHWA reasonably concluded the project will not have a significant impact on the environment, and we adopt that finding for purposes of our approval.
3. The application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. The California Department of Transportation (Caltrans) is authorized to eliminate the existing at-grade crossing of State Route 90 (SR-90), also known as Imperial Highway, and BNSF Railway Company's (BNSF) San Bernardino Subdivision tracks, identified as CPUC Crossing No. 2B-38.40, in Orange County. The at-grade crossing shall be replaced by a new grade-separated crossing, where SR-90 crosses over BNSF tracks on a bridge structure. The new crossing will be identified as CPUC Crossing No. 2B-38.40-B.
2. Caltrans is also authorized to construct a temporary at-grade crossing approximately 100 feet to the east of the existing crossing. The temporary at-grade crossing shall be eliminated either three years from the date of this decision or the date the grade-separated crossings is opened to vehicular traffic, which ever date occurs first.
3. Raised island medians shall be constructed on both sides of the tracks at the temporary at-grade crossing. The automatic railroad crossing warning

devices at the temporary at-grade crossing shall include three Commission Standard No. 9s (flashing light signals with an automatic gate, as described in General Order 75-C) and one Commission Standard 9-A (Standard No. 9 with additional overhead flashing light signals on the cantilevered mast arm). Two of the Commission Standard No. 9s shall be mounted on the raised island median on each side of the tracks, and the third one shall be curb-mounted on the northwest quadrant of the crossing. The Commission Standard No. 9A shall be curb-mounted on the southeast quadrant of the crossing.

4. Caltrans and BNSF shall comply with all applicable rules, including Commission General Orders, Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration, and the California Supplement to the MUTCD published by Caltrans.

5. Construction and maintenance costs shall be borne in accordance with an agreement that has been entered into between Caltrans and BNSF (parties). Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

6. Within 30 days after the temporary at-grade crossing is opened to vehicular traffic, BNSF shall notify the Commission's Consumer Protection and Safety Division, Rail Crossings Engineering Section (RCES) in writing, by submitting a completed Standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), that the temporary at-grade crossing is open and that the existing at-grade crossing is removed. Within 30 days after the grade-separated crossing is opened to vehicular traffic, BNSF shall notify RCES in writing, by submitting a completed Standard Commission Form G that the grade-separated crossing is open and the temporary at-grade crossing is eliminated.

7. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

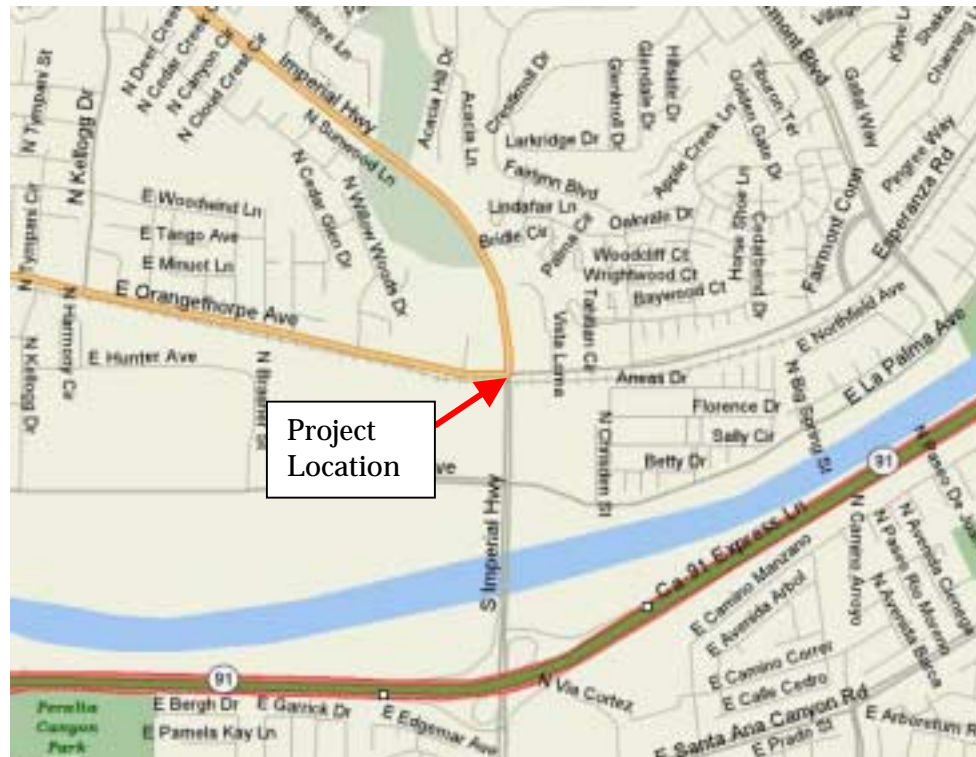
8. This application is granted as set forth above.

9. Application 05-04-026 is closed.

This order becomes effective 30 days from today.

Dated _____ at San Francisco, California.

APPENDIX A
PROJECT LOCATION MAP



APPENDIX B CEQA NEGATIVE DECLARATION

State of California
Department of Transportation

SCH Number: 2002031118
12-ORA-90 K.P.-18.99/20.28 (P.M. 11.8/12.6)

Negative Declaration (CEQA)

Pursuant to: Division 13, Public Resources Code

Project Description

The California Department of Transportation (the Department) proposes to grade separate State Route 90 (Imperial Highway) at the existing Burlington Northern Santa Fe (BNSF) Railway, and construct a new interchange (using the preferred Alternative) at the intersection of State Route 90 and Orangethorpe Avenue/Esperanza Road, in the Cities of Anaheim and Yorba Linda, within the County of Orange.

Determination

The California Department of Transportation (the Department) has prepared an Initial Study. On the basis of this study it is determined that the proposed action will not have a significant effect upon the environment for the following reasons:

There would be no significant effects regarding hazardous materials.

No significant effects on air quality, energy use, noise, or water quality would occur within the project area. There will be areas where the noise level within the project exceeds federal noise abatement criteria. However, construction of noise barriers in these locations will reduce impacts to below the level of significance.


- The character and composition of traffic would not be affected.

Project implementation would not increase floodplain, seismic hazards, energy consumption, soil erosion, or have effects to threatened or endangered species, wetlands, riparian habitat, and wildlife refuge.

No significant effects on historic building, structures, roads, or districts would occur within the project area. The project would however involve grading of the location of the old Scully Adobe Archaeological site. There would be no significant effects to this resource with implementation of a Treatment Program as detailed in the Historic Property Survey Report, and agreed upon by the Federal Highway Administration and the State Historic Preservation Officer.

There would be displacement of businesses or residences, but there would be no significant effects to neighborhood integrity, social environment, recreational and educational facilities, or land use. Property owners would receive fair market value and residents would receive relocation assistance for any dwelling unit acquired for transportation purposes. The legal authority for this is the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended April 2, 1987. Therefore, impacts would be reduced to a less than significant level.

There could be degradation to the existing visual character or quality of the site and its surroundings. However, aesthetic treatment will be implemented during the design phase to reduce the impacts to a less than significant level.


CINDY QUON
District Director
District 12
California Department of Transportation

Date 5-8-03

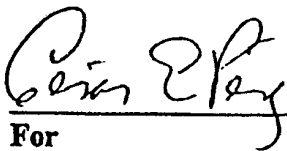
APPENDIX C
FHWA FINDING OF NO SIGNIFICAN IMPACT

**FEDERAL HIGHWAY ADMINISTRATION
FINDING OF NO SIGNIFICANT IMPACT**

For

Proposed grade separation of State Route 90 (Imperial Highway) at the existing Burlington Northern Santa Fe (BNSF) Railway, and construction of a new interchange at the intersection of State Route 90 and Orangethorpe Avenue-Esperanza Road, in the Cities of Anaheim and Yorba Linda, in Orange County

The Federal Highway Administration (FHWA) has determined that the proposed State Route 90/BNSF grade separation and new interchange project at Orangethorpe Avenue-Esperanza Road will have no significant impact on the human environment. This Finding of No Significant Impact is based on the attached Environmental Assessment (EA) and incorporated technical reports, which have been independently evaluated by the FHWA and determined to adequately and accurately discuss the need, environmental issues, and impacts of the proposed project and appropriate mitigation measures. These documents provide sufficient evidence and analysis for determining that an Environmental Impact Statement (EIS) is not required. The FHWA assumes responsibility for the accuracy, scope, and content of the attached EA and incorporated technical reports.



For

Gary Hamby

Division Administrator

Date

5/20/03